

Supreme Court, U. S.
FILED

JUL 7 1978

MICHAEL RODAK, JR., CLERK

IN THE

**SUPREME COURT OF THE
UNITED STATES**

OCTOBER TERM, 1977

No.

78-47

GEORGE E. SCHULKE, *Petitioner*

v.

JUDY K. SCHULKE, *Respondent*

**PETITION FOR A WRIT OF CERTIORARI TO THE
COLORADO COURT OF APPEALS**

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INDEX

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTION PRESENTED	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	4
THE QUESTION IS SUBSTANTIAL	6
CONCLUSION	8
APPENDIX A—Mandate of the Colorado Court of Appeals	9
APPENDIX B — Opinion and Judgment of the Supreme Court of the State of Colorado deny- ing certiorari	11
APPENDIX C — Order of the Colorado Court of Appeals staying mandate pending certiorari to the Supreme Court of the state of Colorado	13
APPENDIX D — Order of the Colorado Court of Appeals denying rehearing	15
APPENDIX E — Opinion and Judgment of the Colorado Court of Appeals	17

INDEX — Continued

	Page
APPENDIX F — Order of the District Court in and for the County of El Paso, State of Colorado, denying motion for new trial	23
APPENDIX G — Final orders of the District Court in and for the County of El Paso, State of Colorado, awarding custody of children to Mrs. Schulke and dividing marital property	25
APPENDIX H — Colorado Revised Statutes § 14-10-127	31

CITATIONS

	Page
CASES:	
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976)	6
<i>Engel v. Vitale</i> , 370 U.S. 421 (1962)	6
<i>Epperson v. Arkansas</i> , 393 U.S. 97 (1968)	6
<i>Rayer v. Rayer</i> , 32 Colo. App. 400, 512 P.2d 637 (1973)	7
<i>School District of Abington v. Schempp</i> , 374 U.S. 203 (1963)	5

INDEX — Continued

	Page
CONSTITUTIONAL AND STATUTORY MATERIAL:	
U.S. Constitution, Amend. I	2, 3, 4
28 U.S. Code § 1257 (3)	2
Colorado Revised Statutes § 14-10-127	2, 3, 4, 6
Colorado Revised Statutes § 14-10-113 (1) (c)	7

IN THE
**SUPREME COURT OF THE
UNITED STATES**

OCTOBER TERM, 1977

No.

GEORGE E. SCHULKE, *Petitioner*

v.

JUDY K. SCHULKE, *Respondent*

**PETITION FOR A WRIT OF CERTIORARI TO THE
COLORADO COURT OF APPEALS**

The petitioner, George E. Schulke, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Colorado Court of Appeals entered in this proceeding on 16 March 1978, affirming the final orders of the District Court in and for the County of El Paso, State of Colorado, entered on 7 July 1977. Certiorari was denied by the Supreme Court of Colorado on 30 May 1978.

The mandate issued out of the Colorado Court of Appeals on 31 May 1978. The case below now is final.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Colorado, denying a writ of certiorari, not yet reported, appears in the Appendix hereto. The opinion of the Colorado Court of Appeals, not yet reported, appears in the Appendix hereto. No opinion was rendered by the District Court in and for the County of El Paso, State of Colorado. The final orders complained of appear in the Appendix hereto.

JURISDICTION

The judgment and opinion of the Supreme Court of Colorado, denying certiorari, was entered on 30 May 1978. The mandate of the Colorado Court of Appeals issued on 31 May 1978. This court's jurisdiction is invoked under 28 U.S. Code § 1257 (3).

QUESTION PRESENTED

The sole question presented is whether the First Amendment to the United States Constitution permits the State of Colorado to force divorcing Lutherans to submit to and pay for a mandatory custody study conducted by an agency of the Roman Catholic Church.

STATUTORY PROVISIONS INVOLVED

Colorado Revised Statutes § 14-10-127 is set forth in full in the Appendix hereto.

STATEMENT OF THE CASE

George E. Schulke is a one hundred per cent disabled American veteran whose wife has decided that she no longer desires to abide her solemn vows "for better or for worse, in sickness and in health." Concluding that she simply wants out, Mrs. Schulke filed suit for dissolution of marriage, demanding custody of their five minor children.

Pursuant to Colorado Revised Statutes § 14-10-127, the court ordered a custody investigation. The Department of Social Services, however, farmed out the task of making the custody evaluation to Catholic Community Services, a religious agency. The evidence disclosed that Catholic Community Services is paid by the Department of Social Services on a contract basis for making such custody evaluations.

Both Mr. and Mrs. Schulke are lifelong Lutherans. Mr. Schulke filed timely objection to the report on the grounds that the Roman Catholic faith has a built-in sexist bias, favoring members of the female sex in awarding custody of children. More particularly, the Roman Catholic faith, with its emphasis on the Blessed Virgin Mary, attaches undue importance to motherhood as opposed to fatherhood. Mr. Schulke objected that the First Amendment to the United States Constitution prohibits establishment of religion. Mr. Schulke further objected that the Department of Social Services is utterly without authority to delegate to a religious body the duty of making a custody evaluation. The distinguished trial court characterized this objection as "hogwash," and admitted the twenty-two page report prepared by Custody Evaluator Janet H. White of Catholic Community Services.

Based upon the illegal Catholic report, the trial court proceeded to award Mrs. Schulke custody of the children.

The trial court then proceeded to divide the property, giving Mrs. Schulke the house and giving Mr. Schulke no compensation for his joint equity in the house.

The Court of Appeals affirmed. The Supreme Court of the State of Colorado denied certiorari.

REASONS FOR GRANTING THE WRIT

Colorado Revised Statutes § 14-10-127 authorizes a custody investigation by "the court probation department or any county or district welfare department," not by a religious agency. The testimony of Janet H. White of Catholic Community Services is uncontested that the Colorado Department of Social Services subcontracted the task of making the instant custody evaluation and report to Catholic Community Services, a religious agency. The honorable trial court erred in considering that twenty-page report over timely objection of Mr. Schulke that the said investigation was not made by the Department of Social Services as initially ordered by the court, but rather by a worker for a religious agency.

The testimony is uncontested that petitioner and respondent are lifelong members of the Lutheran faith, not of the Roman Catholic faith. Mr. Shulke timely objected to any custody evaluation by Catholic Community Services, on the grounds that the Roman Catholic faith has a built-in sexist bias, favoring members of the female sex in awarding custody of children. More particularly, the Roman Catholic faith, with its emphasis on the Virgin Mary, attaches undue importance to motherhood as opposed to fatherhood. Mr. Schulke timely objected that the First Amendment to the United States Constitution prohibits establishment of religion. The Department of Social Services is utterly without authority to delegate to a re-

ligious body the duty of making a custody evaluation. This evaluation must be made directly by the Department of Social Services, or at least by some other state or local governmental agency.

The admission of the report constitutes an illegal establishment of religion in violation of the First Amendment. In the case of *School District of Abington v. Schempp*, 374 U.S. 203, 222, (1963), the United States Supreme Court said:

The wholesome "neutrality" of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert of dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or all orthodoxies.

School District of Abington v. Schempp, 374 U.S. 203, 222, (1963).

Catholic "custody evaluator" Janet H. White further testified that there is a contract between the Colorado Department of Social Services and Catholic Community Services by which the latter conducts custody evaluations (even in non-Catholic marriages, as in the instant case), doing the state's work for it for consideration. The practice is objectionable for the reasons above stated, and for the additional reason that state funds are flowing to a religious organization. In the instant case, insult is added to injury in that a Lutheran has been ordered to pay the expenses of a custody evaluation conducted by a Catholic agency.

THE QUESTION IS SUBSTANTIAL

The "official support of the State behind the tenets of orthodoxy" feared by the Supreme Court has come to pass in the instant case, and the "fusion of governmental and religious functions" is occurring on American soil in Colorado Springs. Patently, the admission of the report was error. *Epperson v. Arkansas*, 393 U.S. 97 (1968); *Engel v. Vitale*, 370 U.S. 421 (1962).

In the instant case, Mr. Schulke's rights further are violated in that he has been ordered to pay the expenses of a custody evaluation conducted by a Catholic agency, and those expenses have received the imprimatur of the state by having been taxed illegally as costs under color of authority of Colorado Revised Statutes § 14-10-127. Thus, in *Buckley v. Valeo*, 424 U.S. 1, 92 (1976), the Supreme Court said: "The Government may not aid one religion to the detriment of others or impose a burden on one religion that is not imposed on others, and may not even aid all religions." By admitting the instant custody report, the court has sanctioned state aid to religion.

Mr. Schulke does not doubt the right of a party litigant to use Catholic Community Services as a private expert witness; it is, rather, that agency's *official* report, under color of Colorado Revised Statutes § 14-10-127, and the custody evaluator's appearance in open court and testimony *as an officer of the court* or at least as an agent of the state, that is constitutionally objectionable. See *Rayer v. Rayer*, 32 Colo. App. 400, 512 P.2d 637 (1973). While Mrs. Schulke no doubt could hire Catholic Community Services on a private basis to furnish her an expert witness, the appearance of Catholic Community Services in an official capacity bears the imprimatur of the state, and further deprives Mr. Schulke of the opportunity to have a custody

evaluation made by a state agency, which right is guaranteed to him by statute.

The distinguished Colorado Court of Appeals misapprehends the issue. The question presented was not how biased is Catholic Community Services, but rather whether a custody evaluation may be performed by a religious body under imprimatur of state law, over the objection of a party litigant.

Since the twenty-two page custody evaluation was obviously considered by the court, and was exhaustive, it cannot be said that the custody determination made by the trial court was not predicated in large measure upon that written evaluation. *Rayer v. Rayer*, 32 Colo. App. 400, 512 P.2d 637 (1973). In Colorado, the disposition of property—including the family home and vehicles—is predicated in part upon the award of custody. Colorado Revised Statutes § 14-10-113 (1) (c). Accordingly, even the award of property is tainted by the illegal reception of the Catholic custody evaluation.

Mr. Schulke hardly considers insubstantial the question whether the First Amendment permits the State of Colorado to force divorcing Lutherans to submit to and pay for a mandatory custody study conducted by an agency of the Roman Catholic faith.

CONCLUSION

George E. Schulke so prays: that a writ of certiorari issue to review the judgments and opinions of the Colorado Court of Appeals and the Supreme Court of the State of Colorado.

Respectfully submitted,

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Counsel for Petitioner

APPENDIX A

APPEAL FROM THE DISTRICT COURT,
EL PASO COUNTY, TO THE COLORADO COURT
OF APPEALS, OPINION ANNOUNCED AND
JUDGMENT ENTERED MARCH 16, 1978
BEFORE ENOCH, BERMAN AND VAN CISE, JJ.

COURT OF APPEALS
State of Colorado
2 East Fourteenth Avenue Suite 310
Denver, Colorado 80203
(303) 881-1111

May 31, 1978

In re the Marriage of:

JUDY K. SCHULKE,
Appellee,

MANDATE

and

77-669

GEORGE E. SCHULKE, (Trial Court No. 03206)
Appellant.

This cause came on to be heard on the record on appeal from the District Court of the County of El Paso, and was argued by counsel, on consideration whereof, it is ordered that the judgment of said Court is AFFIRMED. Order costs taxed in the amount of \$15.00 for the Appellee and

against the Appellant; per C.A.R. 39. Further order said costs be paid into registry of trial court, El Paso District Court.

MAC V. DANFORD,
Clerk of the Court

SUZANNE TURNER,
Clerk

APPENDIX B

**IN THE SUPREME COURT
OF THE STATE OF COLORADO**

No. C-1567

April Term, 1978

GEORGE E. SCHULKE,
Petitioner,

v. CERTIORARI

TO THE

COURT OF APPEALS

JUDY K. SCHULKE,
Respondent.

No. 77-669

**ON PETITION FOR WRIT OF CERTIORARI to
the Court of Appeals.**

After review of the record, the briefs and the opinion of the Court of Appeals,

IT IS ORDERED by this court that said petition be, and the same hereby is, denied.

May 30, 1978

By the Supreme Court
Sitting En Banc

APPENDIX C

IN THE COURT OF APPEALS,
STATE OF COLORADO

No. 77-669

IN RE THE MARRIAGE OF:

JUDY K. SCHULKE,
Petitioner-Appellee,

and

ORDER

GEORGE E. SCHULKE,
Respondent-Appellant.

Upon consideration of the Motion for Stay of Mandate filed in this case, it is this day ordered that issuance of the Mandate herein be, and the same hereby is, stayed to and including May 1, 1978, provided that if Petition for Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the within cause by the Supreme Court.

FOR THE COURT OF APPEALS: Judges Enoch, Berman and Van Cise.

DATED: 4-4-78

APPENDIX D

IN THE COURT OF APPEALS
OF THE STATE OF COLORADO

No. 77-669

IN RE THE MARRIAGE OF:

JUDY K. SCHULKE,
Petitioner-Appellee,

and ORDER

GEORGE E. SCHULKE,
Respondent-Appellant.

Upon consideration of the Petition for Rehearing filed by the *Respondent-Appellant*. herein, said Petition is hereby DENIED. Unless otherwise ordered MANDATE will issue 4-6-78.

BY THE COURT, Judges Enoch, Berman and Van Cise

Dated: 3-30-78

If certiorari to the Supreme Court is planned and a stay of issuance of mandate desired, petition for such stay must be filed in the Court of Appeals prior to the above date of issue.

APPENDIX E**COLORADO COURT OF APPEALS**

No. 77-669

In Re the Marriage of:**JUDY K. SCHULKE,**
Appellee,

and

GEORGE E. SCHULKE,
*Appellant.***Appeal from the District Court of the County of El Paso**
Honorable William E. Rhoades, Judge**DIVISION II****JUDGMENT AFFIRMED****Opinion by JUDGE ENOCH**
Berman and Van Cise, JJ., concurMelat and Wheeler
Jeffrey R. Wheeler
Colorado Springs, Colorado

Attorney for Appellee

Maurice R. Franks
Pueblo, Colorado

Attorney for Appellant

Dated: March 16, 1978

In this dissolution of marriage action, husband appeals from those parts of the judgment relating to child custody and property division. We affirm.

At the time of dissolution of their 20-year marriage, five of the parties' six children were unemancipated. Pursuant to § 14-10-127 (1), C.R.S. 1973 (1976 Cum. Supp.) the trial court, upon motion by wife, ordered a custody investigation, report, and recommendation from the Department of Social Services, and it also ordered psychiatric evaluations of both parties. *See* § 14-10-126 (2), C.R.S. 1973.

I.

Husband alleges that the court erred in admitting and considering the custody investigation report (which was favorable to the wife) because it was prepared by "Custody Evaluator, Catholic Community Services." We find no merit in this allegation.

In support of his position, husband contends that the Catholic Community Services is a religious agency, that the Department of Social Services had no authority to delegate the duty of making a custody evaluation to a religious body, that this particular religious body favors awarding custody to mothers, and that by use of this agency the state is supporting a religion in violation of the First Amendment to the United States Constitution.

The law and evidence do not support husband's concerns. First, it should be noted that payment by the state to a religious organization for services is not a violation of the First Amendment. *See Schade v. Allegheny County Institution District*, 386 Pa. 507, 126 A.2d 911 (1956); *Cf. Everson v. Board of Education*, 330 U.S. 1, 67. S.Ct. 504, 91 L.Ed. 711 (1947). And, contrary to husband's conten-

tions, there is statutory and administrative authority for the purchase of services for child custody evaluation. Pursuant to § 26-2-103 (11), C.R.S. 1973 (1976 Cum. Supp.), the Department of Social Services has adopted a rule that when the court requests the county department to make a custody investigation, the department may purchase the services from a qualified provider under a contract approved by the state department. *Social Services Policies Ch. II, A-7212.4 (1)*.

Also, there is no evidence in the record that the Catholic Church favors custody in mothers, and, in any event, the person who prepared the report in question testified that she is not a Catholic. She also testified that the part of the agency program which handles custody evaluations receives no financial support from the Church, but is fully funded by proceeds received from the Department of Social Services. Furthermore, husband has not specified any portions of the report which he considers prejudicial, and based on our examination of the document, we agree with the trial court's conclusion that there is a total lack of religious bias in the report. *Cf. Menne v. Menne*, — Colo. —, 572 P.2d 472.

II.

Husband also contends that the court erred in considering the written psychiatric evaluation reports on the grounds that the reports lacked authentication and were inadmissible heresay. We do not agree.

Husband agreed to the wife's request for these reports at a time in the proceedings when he was represented by other than his present counsel. It is not clear from the record when or how the court received a copy of the doctor's report on the husband, but wife's report was included in the agency's custody report. Nevertheless, present counsel re-

ceived the reports directly from the doctor prior to the custody hearing, raised no objection to the reports until the close of wife's evidence, and did not call the doctor for cross-examination though given an opportunity to do so by the court. He was also afforded full opportunity to present other evidence in rebuttal. Under these circumstances, we find no error by the court in considering the reports. *Cf. Aylor v. Aylor*, 173 Colo. 294, 478 P.2d 302; *Anderson v. Anderson*, 167 Colo. 88, 445 P.2d 397; *Pacheco v. Pacheco*, ___ Colo. App. ___, 554 P.2d 720; *Rayer v. Rayer*, 32 Colo. App. 400, 512 P.2d 637.

III.

Husband's final contention is that the court made an inequitable division of the marital property and made no findings to support its order.

The division of marital property is a matter generally within the sound discretion of the trial court, and will not be set aside unless there has been an abuse of discretion. *Carlson v. Carlson*, 178 Colo. 283, 497 P.2d 1006. An equitable division of property does not necessarily require an equal division. *In re Marriage of Davis*, 35 Colo. App. 447, 534 P.2d 809. Furthermore, the order of division must be reviewed in relation to orders on maintenance, child support, and attorney fees. *Carlson, supra*; *In Re Marriage of Davis, supra*.

Husband has a full disability pension providing a net monthly income of approximately \$864, and the major marital asset is the family home. The court ordered husband to pay \$350 monthly for support of the children but awarded no maintenance for the wife. The parties are to pay their own attorneys' fees, and wife is obligated to pay a larger portion of the family debts. Under these circum-

stances and the legal guidelines stated above, we find no abuse of discretion in the court's judgment and particularly in awarding the family home to the wife because she had the responsibility of rearing the five children. See § 14-10-113 (1) (c), C.R.S. 1973. See also *Moss v. Moss*, ___ Colo. ___, 549 P.2d 404.

Though the findings are not as detailed as might be desired they are sufficient under the circumstances of this case to support the trial court's conclusion and are adequate for purposes of review. *Westland Nursing Home v. Benson*, 33 Colo. App. 245, 517 P.2d 862.

Judgment affirmed.

JUDGE BERMAN and JUDGE VAN CISE concur.

APPENDIX F

IN THE DISTRICT COURT WITHIN AND FOR
THE COUNTY OF EL PASO AND THE
STATE OF COLORADO

Civil Action No. 03206

Division No. 4

IN RE THE MARRIAGE OF:

JUDY K. SCHULKE,
Petitioner,

and

ORDER

GEORGE E. SCHULKE,
Respondent.

The Court having considered all matters concerning
and covered by the Motion for New Trial without argument
DENIES the same.

DONE IN CHAMBERS this 7th day of July, 1977.

BY THE COURT:

WM. E. RHOADES
Judge

APPENDIX G

IN THE DISTRICT COURT WITHIN AND FOR
THE COUNTY OF EL PASO AND THE
STATE OF COLORADO

Civil Action No. 03206

Div. No. 4

IN RE THE MARRIAGE OF:

JUDY K. SCHULKE,
Petitioner,

and

FINAL ORDERS

GEORGE E. SCHULKE,
Respondent.

THIS MATTER, having come on for hearing on the 30th day of June, 1977, Petitioner appearing personally and through her attorney, Jeffrey R. Wheeler, the Respondent appearing personally and through his attorney, Maurice R. Franks, and the Court having heard the evidence and being otherwise fully advised in the premises;

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED, as follows:

I. CUSTODY OF MINOR CHILDREN

The care, custody and control of the minor children of the parties', namely: JILL ELIZABETH SCHULKE,

MINDY JO SCHULKE, JODIE KAE SCHULKE, GEORGE E. SCHULKE, JR., and WILLIAM W. SCHULKE, is vested in Petitioner, with visitation rights reserved to Respondent as set forth below.

II. VISITATION BY RESPONDENT

1. Respondent shall have the right to visit any or all of his minor children every other weekend beginning July 9, 1977. Said visitation shall commence at noon on Saturday and continue through and until Sunday at 6:00 P.M. Said visitation shall take place at a location other than the family home located at 1380 Hiawatha Drive, Colorado Springs, Colorado. At least forty-eight (48) hours prior to any scheduled visitation, Respondent shall notify Petitioner if he intends to exercise such visitation and which of the minor children he desires to visit.

2. Respondent shall further be entitled to extended visitation with the minor children, for a period of time not to exceed one (1) month, during the non-school summer months, commencing in the Year 1978. Respondent shall notify Petitioner at least one (1) month in advance of when he desires to exercise such extended visitation and which children he desires to visit.

3. Respondent shall have the further right to visit with the minor children during alternate Christmas and Spring vacations commencing with the Spring vacation of 1978 and continuing on an alternating basis from that date.

4. If any of the minor children, namely: JILL ELIZABETH, MINDY JO, and JODIE KAE, do not desire to participate in either the periodic or extended visitation periods with Respondent, they shall notify Respondent in writing of their intentions.

III. CHILD SUPPORT

Respondent shall pay the sum of \$70.00 per child per month as his contribution towards the support of the minor children of the parties'. The sum of \$350.00 shall be paid through the Registry Fund of the El Paso County District Court and shall commence not later than July 5, 1977. Payments shall be made to the Registry Fund not later than the fifth day of each month. Payments shall continue for all minor children at the rate of \$70.00 per month until such child reaches the age of twenty-one (21) years or is sooner emancipated. Respondent's first payment to the Registry Fund should include an additional \$5.00, the cost of opening an account with the Registry Fund.

IV. PROPERTY DIVISION

(A) REAL PROPERTY

1. Petitioner is awarded the family residence located at 1380 Hiawatha Drive, Colorado Springs, Colorado. Petitioner shall be responsible for and pay all mortgage payments, taxes, utilities, and other charges directly related to the ownership of said property.

2. Respondent is awarded the lot owned by the parties' in New Mexico and shall be responsible for and pay all mortgage payments, taxes, utilities and other charges directly related to the ownership of said property.

3. The parties shall execute documents necessary to transfer legal ownership of the above-mentioned property within thirty (30) days. If either party shall fail or refuse to execute documents necessary to transfer said ownership, the Clerk of this Court is empowered and authorized hereby

to perform any and all acts necessary to accomplish said transfers.

(B) PERSONAL PROPERTY

1. Petitioner is awarded the 1971 Buick station-wagon and shall be responsible for all mortgage payments, license fees, maintenance and other costs directly associated with the ownership of said automobile.

2. Respondent is awarded the Gremlin and Pinto automobiles and shall be responsible for all mortgage payments, maintenance, insurance and other expenses directly related to the ownership of said automobiles.

3. The parties shall execute appropriate documents to transfer ownership of said motor vehicles in accordance with the preceding two paragraphs within thirty (30) days. If either party shall fail or refuse to execute the necessary documents, the Clerk of this Court is empowered and authorized hereby to perform any and all acts necessary to accomplish said transfers.

4. Petitioner is awarded all furniture and other household effects presently in the family residence located at 1380 Hiawatha Drive, Colorado Springs, Colorado.

5. Petitioner is awarded the \$89.00 insurance check presently held by Respondent. Respondent is directed to properly endorse said check and forthwith transfer same to Petitioner.

V. EXISTING OBLIGATIONS

Petitioner shall be responsible for and pay all debts appearing on the Supplemental Affidavit With Respect To

Financial Affairs filed by her. Respondent shall be responsible for and pay all other indebtedness incurred by the parties prior to and including June 30, 1977.

VI. ATTORNEY FEES AND COSTS

The parties shall each bear their respective attorney fees and costs.

VII. MISCELLANEOUS ORDERS

Each of the parties shall contribute the sum of \$100.00 towards the costs of the custody investigation previously ordered. Petitioner has previously deposited with the Court the sum of \$50.00 and that amount shall be credited towards her \$100.00 obligation. Payment of amounts yet owing by both parties shall be payable through the division clerk, Division 4, El Paso County District Court, not later than July 30, 1977.

It is further ordered, that this Court retains such Jurisdiction of this action as is provided by law.

Respondent is granted thirty (30) days from the date of the entry of this Order to file a Motion For New Trial.

DATED this 7th day of July, 1977, at Colorado Springs, Colorado.

BY THE COURT:

(s) WILLIAM E. RHOADES

The Honorable William E. Rhoades

APPROVED BY:

MELAT AND WHEELER

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Attorney for Respondent.

APPENDIX G

COLORADO REVISED STATUTES § 14-10-127

14-10-127. Investigations and reports. (1) In all custody proceedings, the court shall, upon motion of either party or upon the court's own motion, order the court probation department or any county or district welfare department to investigate and file a written report concerning custodial arrangements for the child. Except as otherwise provided in this section, such report shall be considered confidential and shall not be available for public inspection unless by order of court. The cost of each investigation shall be based on an ability to pay and shall be assessed as part of the costs of the action or proceeding, and, upon receipt of such sum by the clerk of court, it shall be transmitted to the department or agency performing the investigation.

(2) In preparing his report concerning a child, the investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the parent or the child's custodian; but the child's consent must be obtained if he has reached the age of sixteen unless the court finds that he lacks mental capacity to consent. If the requirements of subsection (3) of this section are fulfilled, the investigator's report may be received in evidence at the hearing.

(3) The court shall mail the investigator's report to counsel and to any party not represented by counsel and

to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (2) of this section, and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person whom he has consulted for cross-examination. No party may waive his right of cross-examination prior to the hearing.